

STATE OF MICHIGAN
COURT OF APPEALS

CARMEN Y. BURGIE,

Plaintiff-Appellee,

v

ROBIN M. LILEIKIS and CATHERINE
LILEIKIS,

Defendants,

and

CAPITAL AREA TRANSPORTATION
AUTHORITY, DAVID R. ROBINSON, JOHN L.
WINGO, and SANDY RIOS,

Defendants-Appellants.

UNPUBLISHED
February 10, 2005

No. 250666
Ingham Circuit Court
LC No. 02-000300-NI

Before: Markey, P.J., and Murphy and O'Connell, JJ.

PER CURIAM.

Defendants Capital Area Transportation Authority (CATA), Robinson, Rios, and Wingo, appeal by leave granted from the trial court order that deferred the court's ruling on their motion for summary disposition pursuant to MCR 2.116(C)(7) and (10). Plaintiff filed a claim against these defendants and against defendants Robin and Catherine Lileikis. The complaint alleged various forms of negligence against defendants for injuries she sustained when she walked between two parked buses and out into the roadway where defendant Robin Lileikis struck her with a jeep. The buses were being driven by Robinson and Wingo. Rios was the director of operations at CATA. We reverse.

Appellants first argue that the trial court erred in denying summary disposition to defendants Robinson, Rios, and Wingo, because their actions, even if grossly negligent, were not "the proximate cause" of plaintiff's injuries as a matter of law. We agree. A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201(1998). Such a motion should be granted when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10).

In this case, the material facts underlying the suit were undisputed, so resolution of appellants' motion depended solely on whether those facts were sufficient to establish a prima facie case for liability. MCR 2.116(C)(10). In this case, defendants Rios, Wingo, and Robinson were undisputedly employees of CATA, a governmental agency. Therefore, MCL 691.1407(2) applies and states the following:

[E]ach officer and employee of a governmental agency . . . is immune from tort liability for an injury . . . caused by the officer, employee, or member while in the course of employment or service . . . if all of the following are met:

* * *

(c) The . . . conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

Our Supreme Court has stated, "The phrase 'the proximate cause' is best understood as meaning the one most immediate, efficient and direct cause preceding an injury." *Robinson v Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000). Applying the standard in this case, the jeep's impact with plaintiff's body was "the one most immediate, efficient and direct cause" of her injuries, and neither the bus drivers nor CATA's director of operations exercised control over the motion of those entities. *Curtis v Flint*, 253 Mich App 555, 563; 655 NW2d 791 (2002). Therefore, even if plaintiff had established the necessary level of negligence, her claims against these defendants were factually insufficient to overcome their immunity. *Id.*

Appellants next argue that the trial court erred in denying summary disposition as to defendant CATA because plaintiff's injuries did not arise out of the "operation" of a motor vehicle and because plaintiff's injuries did not qualify as "damage resulting from" the buses' operation. MCL 691.1405. We agree. "Governmental agencies shall be liable for bodily injury and property damage *resulting from* the negligent *operation* by any . . . employee of the governmental agency, of a motor vehicle of which the governmental agency is owner" MCL 691.1405 (emphasis added). Otherwise, governmental agencies are generally immune from tort liability. MCL 691.1407(2). In the present case, plaintiff does not challenge that CATA was a governmental agency discharging a governmental function. Therefore, plaintiff's claim against CATA fails unless her injuries resulted from the operation of the buses. *Id.*

Because the statute allows liability only for injuries "resulting from" the negligent operation of a government-owned vehicle, as opposed to a lesser "but for" standard, the motor vehicle exception will not apply unless there is physical contact between the government-owned vehicle and that of the plaintiff, or the government-owned vehicle physically forced the plaintiff's vehicle off the road or into another vehicle or object. [*Curtis, supra* at 561.]

In the present case, the buses did not physically hit plaintiff and did not physically push the jeep into plaintiff. Contrary to plaintiff's claims, the buses did not force her into the path of the oncoming jeep, because they exerted no physical force on her at all. As a result, plaintiff's

injuries did not result from the buses negligent “operation” within the meaning of the statute, and the trial court erred when it failed to grant CATA’s motion for summary disposition.

Reversed and remanded for entry of judgment in favor of appellants. We do not retain jurisdiction.

/s/ Jane E. Markey

/s/ Peter D. O’Connell